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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/824,880	04/15/2004	Alain Romier	28944/40098	7325

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MCCRACKEN & FRANK LLP
200 W. ADAMS STREET
SUITE 2150
CHICAGO, IL 60606

EXAMINER

ADDIE, RAYMOND W

ART UNIT	PAPER NUMBER
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3671

DATE MAILED: 02/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/824,880

Applicant(s)

ROMIER ET AL.

Examiner

Raymond W. Addie

Art Unit

3671

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 October 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 April 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 10/12/04.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Objections

1. Claim 5 is objected to because of the following informalities:

In line 3 the phrase "adding water" should be --adding water plus a wetting agent--, in order to be consistent with the limitations of Claim 1. Appropriate correction is required.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claim 6 is rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for "a hopper 2 for receiving hot blacktop material, e.g. at a temperature lying in the range 60°C to 140°C, for example in the range 60° to 100°C, or in the range 100°C to 130°C, and preferably about 110°C, which, does not reasonably provide enablement for "blacktop material is at a temperature lying in the range 60°C to 100°C during the steps of adding water and spreading...the blacktop material is at a temperature lying in the range 100°C to 130°C, and preferably about 110°C during the steps of adding water and spreading.. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make

the invention commensurate in scope with these claims. The specification does not disclose the temperature of the blacktop material during mixing and spreading.

The specification only provides the temperature range of the blacktop material when it is placed in the hopper (2). Further, the specification provides no features to maintain or raise the temperature of the blacktop material after it leaves the hopper (2).

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 7 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

A broad range or limitation together with a narrow range or limitation that falls within the broad range or limitation (in the same claim) is considered indefinite, since the resulting claim does not clearly set forth the metes and bounds of the patent protection desired. Note the explanation given by the Board of Patent Appeals and Interferences in *Ex parte Wu*, 10 USPQ2d 2031, 2033 (Bd. Pat. App. & Inter. 1989), as to where broad language is followed by "such as" and then narrow language. The Board stated that this can render a claim indefinite by raising a question or doubt as to whether the feature introduced by such language is (a) merely exemplary of the remainder of the claim, and therefore not required, or (b) a required feature of the

claims. Note also, for example, the decisions of *Ex parte Steigewald*, 131 USPQ 74 (Bd. App. 1961); *Ex parte Hall*, 83 USPQ 38 (Bd. App. 1948); and *Ex parte Hasche*, 86 USPQ 481 (Bd. App. 1949). In the present instance, claim 7 recites the broad recitation in the range 100⁰ C to 130⁰ C, and the claim also recites and preferably about 110⁰ C which is the narrower statement of the range/limitation.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 4, 5, 8, 9 are rejected under 35 U.S.C. 102(b) as being anticipated by
Kilheffer et al. # 5,590,976.

Kilheffer et al. discloses a method and apparatus for laying hot blacktop paving material.

Said apparatus comprising:

Mixer means (24) receiving blacktop material.

At least one water inlet (16, 18, 20, 56, 58, 60, 62, 64, 66) fed with water plus wetting
agent.

A spreader device (68) receiving the material from the mixer means.

Wherein said at least one water inlet further comprises at least one metering device (58,

62, 66) intended for metering out the water plus wetting agent. See Fig. 1; Cols. 5-6.

In regards to claims 1, 4, 5 Kilheffer et al. discloses a method for laying blacktop paving material comprising the steps of: Adding water plus wetting agent in a concentration of 5% relative to the weight of the blacktop material.

Mixing, by kneading, water plus a wetting agent to a blacktop material.

Spreading said mixture of water, plus wetting agent and blacktop material onto a sub-base to form a roadway.

Wherein the blacktop material is in a non-foamy fluid state during the steps of adding water plus a wetting agent and spreading.

See col. 9, Ins. 44-66.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2, 3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kilheffer et al. # 5,590,976 in view of Burch # 6,682,593 B2.

Kilheffer et al. discloses a method and apparatus for mixing and spreading asphaltic paving materials onto a surface for forming a roadway. But does not disclose the

weight percent of the water plus wetting agent nor the weight percent of the aggregate. However, Burch teaches a method of mixing aggregate and emulsion to form a paving mixture having about 5%, by weight of emulsion, and about 95%, by weight of aggregate. Although Burch does not disclose a "molar concentration" of the emulsion constituent parts; Burch does disclose the emulsion comprises between about 0.5% and 5%, by weight, of a wetting agent (36), which corresponds to a "molar concentration" of approximately .1%-1.5%.

Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made to provide the method of spreading a blacktop material onto a roadway of Kilheffer et al., with the method of mixing aggregate and an emulsion, into a mixture having about 5% by weight emulsion, as taught by Burch, in order to form a hardened pavement capable of withstanding vehicular traffic as well as environmental conditions. See Burch Cols. 1-3.

6. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kilheffer et al. # 5,590,976 in view of Thomas et al. # 6,599,057.

Kilheffer et al. discloses a method and apparatus for mixing and spreading asphaltic paving materials onto a surface for forming a roadway. But does not disclose the temperature of the mixture during construction of the roadway. However, Thomas et al. teaches that emulsified asphaltic paving materials can be maintained at lower

temperatures i.e. less than 71⁰C; in a cold mix paving system. Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made to maintain the temperature of the emulsified asphalt of Kilheffer et al., at about 71⁰C; as taught by Thomas et al., in order to reduce the cost of paving, by reducing the application temperature of the paving material. Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made to provide the method of spreading a blacktop material onto a roadway of Kilheffer et al., with the method of maintaining the temperature of the paving material at about 71⁰C, as taught by Thomas et al., in order to reduce the cost of paving. See Thomas et al., col. 9, lns. 4-22.

7. Claims 3, 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kilheffer et al. # 5,590,976 in view of Omann # 6,186,700 B1.

Kilheffer et al. discloses a method and apparatus for mixing and spreading asphaltic paving materials onto a surface for forming a roadway. But does not disclose the temperature of the aggregate when it is placed into the hopper (12). However, Omann teaches it is desirable to heat an aggregate, intended for use in making asphaltic roadways, in a range of 120⁰C or more and to mix said aggregate with an asphaltic or asphalt-concrete oil, in a proportion of 5% by weight of asphalt. Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made,

to provide the method of laying hot blacktop paving material of Kilheffer et al., with the method of heating aggregate and mixing with asphalt in a proportion of 5% by weight asphalt, as taught by Omann, in order to form a roadway capable of accommodating vehicular traffic.

Conclusion

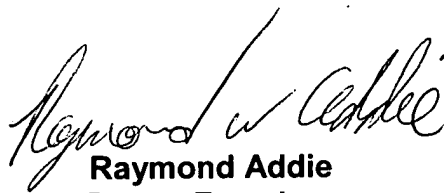
8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Omann # 6,588,973 B1 discloses a pavement method and composition. Higgins # 5,047,457 discloses an asphalt composition.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Raymond Addie whose telephone number is (703) 305-0135. The examiner can normally be reached on Monday-Friday from 7:00 am to 2:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas B. Will, can be reached on (703) 308-3870. The fax phone number for this Group is (703) 872-9326. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 3671

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).
On or about 3/30/05 Examiner Addie's telephone number will become (571) 272-6986.


Raymond Addie
Patent Examiner
Group 3600

RWA
2/18/2005